IN THE

Supreme Court of the United States

No. 70-34

SIERRA CLUB, a California corporation,
Petitioner,

v.

ROGERS C. B. MORTON, individually and as Secretary of the Interior of the United States, et al.,
Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Motion of the County of Tulare as Amicus Curiae For Leave to Argue Orally

E. LEWIS REID
3400 Crocker Plaza
San Francisco, California 94104
Telephone: (415) 982-0116

CALVIN E. BALDWIN
COUNTY COUNSEL
County of Tulare Courthouse
Visalia, California
Telephone: (209) 732-5511

Attorneys for the County of Tulare

STEINHART, GOERSEL, FEIGENBAUM & ...
Of Counsel

... COMPANY OF CALIFORNIA, 345 FIRST STREET, SAN FRANCISCO 94105

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MOTION

The County of Tulare, a political subdivision of the State of California, respectfully moves this Court pursuant to Rule 44(7) for leave to argue orally as *amicus curiae* in support of the position of Respondents. The County of Tulare has filed an extensive brief as *amicus curiae* in this case. The consent of the Solicitor General has been sought pursuant to Rule 44(7), but he has declined to make any portion of Respondents' time for oral argument available to the County of Tulare. The motion should be granted to assure

that Counsel familiar with all issues which have been briefed will be available to the Court.

ARGUMENT

The proposed Mineral King recreational area which is the subject of this litigation would be located in Tulare County. Tulare County is nearly three times the size of the State of Delaware. The county is the unit of government primarily responsible for planning and land use within its boundaries. Since more than half of the land in the county is federally owned, decisions as to land use on federal land necessarily impinge upon land use decisions in non-federal areas. For that reason, Tulare County has worked for several years with state and federal agencies in planning for public outdoor recreation at Mineral King.

Throughout this litigation the Department of Justice has concentrated more on resolving uncertainty in the law of standing than on resolving the merits of the particular dispute. This was apparent in oral argument before the Ninth Circuit Court of Appeals when virtually all of the government's argument was devoted to the standing issue. The Solicitor General has now suggested that "If this Court agrees with our contention that petitioner has no standing to challenge the Secretaries' action, no further inquiry is required." (Brief for Respondent, p. 36).

It would be a grave injustice to the citizens of the County of Tulare to allow the most important land use issue ever raised within their county to be eclipsed by procedural questions. The Mineral King recreation area will be one of the world's outstanding ski areas. The U. S. Forest Service has planned for recreational use of Mineral King for over twenty years and it is contemplated that $25,000,000.00 of public funds will be spent to provide access to the area and

$35,000,000.00 of private funds will be spent by the permittee, Walt Disney Productions, to build the recreational facilities. Obviously, anticipation of such a recreation area has influenced land use planning in the County of Tulare over the past several years and will continue to do so in the future. But the project has been stalled for the past two years by litigation in which the Sierra Club raises issues going to the authority of the Secretaries of the Interior and Agriculture to permit outdoor recreation on the public lands. If this case is disposed of solely on the grounds that the Sierra Club is not an appropriate plaintiff, the case may be recast with another plaintiff in the future. The State of California and Disney might well decide it would be imprudent to spend $60,000,000.00 on the Mineral King project without a clear and final resolution of this dispute on its merits.

Similarly, the Department of Agriculture, faced with dozens of existing ski areas operating on permits which the Sierra Club asserts are invalid, and planning for future recreational developments, must know whether the permit it proposes to issue to Disney is valid under existing law. *Hearings on H. R. 9417 Before a Subcommittee of the Senate Committee on Appropriations,* 92d Cong., 1st Sess. 2922 (1971).

The County disagrees with the position of the Solicitor General that if the Sierra Club lacks standing this case is moot and the Court should not proceed to the merits. There is a strong public interest in the resolution of the issues in this case on their merits at this time. Where substantial public interests are involved and there exists an unresolved dispute which is likely to continue between essentially the same parties, this Court has traditionally considered and

ruled on the merits of cases which technically may have become moot, *Motor Coach Employees v. Missouri,* 374 U.S. 74 (1963); *Southern Pacific Co. v. Interstate Commerce Comm.,* 219 U.S. 433 (1911); *Southern Pacific Terminal Co. v. Interstate Commerce Comm.,* 219 U.S. 498 (1911); *United States v. Trans-Missouri Freight Association,* 166 U.S. 290 (1897); Note, *Cases Moot on Appeal,* 103 U. Pa.L.Rev. 772 (1955), or in which the particular plaintiff may arguably have lost standing to raise the issue. *Moore v. Oglivie,* 394 U.S. 814 (1969); *Carroll v. President and Commissioners of Princess Anne,* 393 U.S. 175 (1968). Accordingly, it is important that the County of Tulare, which has carefully briefed all of the issues in the case both in the Ninth Circuit and in this Court, be permitted to argue orally so that the merits might be fully presented to the Court.

For the foregoing reasons the County of Tulare respectfully requests this Court to grant its motion for leave to argue orally.

Respectfully submitted,

E. Lewis Reid
Calvin E. Baldwin
Attorneys for County of Tulare

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